

Oklahoma Installation Company and Carpenter's Local Union No. 123, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Petitioner. Case 26-RC-7307

December 10, 1991

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On October 18, 1990, the Regional Director for Region 26 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a unit of all carpenters, apprentice carpenters, and carpenters' helpers employed by the Employer in a three-county area in the State of Tennessee comprising Davidson, Williamson, and Wilson Counties.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Employer contends in its request for review that the geographical scope of the Regional Director's unit finding is erroneous and that the only appropriate unit is the ongoing jobsite where the Employer now is working. The Employer further contends that, in any event, the Regional Director erred by including prospective jobsites in Wilson and Williamson Counties because the Employer has never performed work in these counties. Finally, the Employer contends that the Regional Director's application of *Daniel Construction Co.*, 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967), is erroneous.¹ On November 14, 1990, the Board granted the Employer's request for review. No briefs were filed on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record and has decided to affirm the Regional Director's Decision and Direction of Election as modified below.

1. The Employer is engaged in the construction business of installing fixtures, including the installation of interior millwork. During the year 1990 the Employer had contracts to perform some 450 small remodeling jobs, 18 major renovations, and 10 new construction jobs. Its main office is in Owasso, Oklahoma. All of the Respondent's jobs in the middle Tennessee area, thus far, have been in Davidson County. The Employer's only ongoing project in middle Tennessee is at the Green Hills Mall in Davidson County. It also is

performing work at another site in Davidson County, Hickory Hollow, but that project does not yet involve millwork or the installation of fixtures.

The Employer's president, Jack Broler, testified that when the Employer has in the recent past secured jobs in the middle Tennessee area, it has assigned a superintendent, who is then responsible for all hiring and for purchasing building materials. Broler is responsible for securing bids and for leasing equipment. The job superintendent customarily arranges for newspaper advertisements seeking construction workers and conducts interviews with applicants.

All labor relations policies are centrally established by Broler from Oklahoma. Although the job superintendent sets wages at the jobsite and has some latitude in doing so, strict parameters are set by Broler. According to the testimony of employees, their superintendent hired them at a starting wage level and then told them he would "top them out" at a \$1 wage increase shortly thereafter if they worked out. The increase was within the parameters set by Broler. Further, these employees testified that their superintendent informed them that the Employer intended to keep their "key people" and would give these key people an opportunity to go to other jobs that the Employer had available in the future. Although Broler testified initially that the Employer did not have a policy of transferring employees from one job to another, he later testified that the Employer has no policy that would keep a superintendent from taking key people from jobsite to jobsite. Indeed, the record shows that a minimum of 11 employees have worked on more than one jobsite for the Employer in Davidson County during the previous 2-year period.²

In determining whether a petitioned-for multisite unit is appropriate,³ the Board considers relevant the following criteria: bargaining history; functional integration of operations; the similarity of skills, duties, and working conditions of employees; central control of labor relations and supervision; and interchange and/or transfers of employees among construction sites. *Dezcon, Inc.*, 295 NLRB 109 (1989); *P. J. Dick Contracting*, 290 NLRB 150 (1988). On the facts presented, we agree with the Regional Director that a multisite unit is appropriate.

Contrary to the assertions of the Employer, this is not a case where the only appropriate unit is the ongoing single-site project at Green Hills Mall. The Em-

¹ There are no issues regarding the composition of the unit, found to include carpenters, apprentice carpenters, and carpenter's helpers, excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

² Bd. Exh. 4 contains a listing of employees at each of the Employer's jobsites during the previous 2 years. This document reveals that at least 11 employees worked on more than one jobsite. Further, employee James Burgess testified that six additional employees (out of seven he identified by name) were moved from one jobsite (Green Hills) to another jobsite (Bellevue).

³ Of course, the Board's task, as all parties recognize, is to determine an appropriate unit, not the most appropriate or comprehensive unit.

ployer's contention is based on the notion that the Employer's construction projects, including Green Hills, function essentially as wholly independent operations. Although the Employer seeks to characterize each of its projects as an autonomous operation, we find that employees at all of its projects in Davidson County share a substantial community of interest. Thus, uncontradicted employee testimony reveals the existence of "key" employees and, indeed, the record shows that the Employer has employed numerous employees on a multisite basis. On occasion, when the need has arisen, the Employer has moved employees from one jobsite to another on a temporary basis.⁴ Further, labor relations policies and procedures are centralized in company headquarters in Oklahoma and, therefore, all the Employer's projects are subject to identical policies. With regard to establishing employees' wages, the record reveals only a minimal degree of discretion on the part of the job superintendent. In addition, whether the construction project involves new construction, remodeling, or major renovation, it appears that similar employee skills are required. The Employer has made no showing that the required skills, duties, and working conditions vary from jobsite to jobsite within each category. Finally, President Broler testified that the Employer intends to bid on future projects in Davidson County.⁵ In these circumstances, we agree with the Regional Director that a multisite unit is appropriate; however, unlike the Regional Director, we shall limit that unit to Davidson County.

The Regional Director found that the unit properly encompassed not only Davidson County, where the Employer has had many projects, but should also encompass the Employer's operations in Wilson and Williamson Counties because there was a possibility that the Employer would obtain work in those counties. As the Employer correctly points out, however, it has not in the past performed any work in either Williamson or Wilson County and has no outstanding contractual bids to perform work in those counties in the future. In addition, although Broler testified that the Employer intends to bid on future projects in Davidson County, he gave no indication that the Employer intends to bid on projects elsewhere. Accordingly, at this time, any connection between these counties and the Employer's operations is speculative at best.

As noted, the Employer's president, Jack Broler, is responsible for securing bids on future projects. Contrary to statements attributed by employees to one of

the Employer's superintendents regarding work at a future project at Mount Juliet Mall in Wilson County, Broler testified that, he had "never heard of it." Regarding work at a project at Cool Springs Mall in Williamson County, Broler testified that, to his knowledge, that jobsite was in a preliminary stage, and the Employer had not submitted a bid.

On these facts, and in view of the Employer's history, we find that the record is insufficient to establish the likelihood of future work for the Employer in Williamson and Wilson Counties so as to warrant now the inclusion of those counties in an appropriate unit. We note that in *Dezcon, Inc.*, supra at fn. 13, the Board included in a multisite unit one county where the employer had never conducted business, because "no party has proposed an election in a unit excluding that county." Here, the propriety of including a county where the Employer has had no presence has been squarely raised. Moreover, the Petitioner has agreed to proceed in any unit that the Board finds appropriate. In these circumstances, we discern no logical basis to grant a unit including a geographical area⁶ in which the Employer has never conducted business. We shall, therefore, limit the unit found appropriate to Davidson County where the Employer has at all pertinent times maintained operations.

2. In directing an election the Regional Director applied the eligibility formula set forth in *Daniel Construction Co.*, supra, finding eligible to vote certain employees who are not presently employed by the Employer. Under the *Daniel Construction* formula all employees who were employed for 30 days or more during the 12-month period preceding the eligibility date or who were employed for 45 days or more in the 24 months preceding the eligibility date are eligible, in addition to those employees meeting the usual criteria. The Employer contends that employees meeting the *Daniel Construction* requirements who are presently not working for the Employer are "strangers" to the Employer and should not be eligible to vote. We find no merit to the contention.

In *S. K. Whitty & Co.*, 304 NLRB 776 (1991), the Board recently revisited the question of voter eligibility standards in elections involving construction industry employers who hire on a project-by-project basis and, in particular, the standard embodied in the *Daniel Construction* formula. We endorsed the purposes for which the Board had constructed that for-

⁴*Longcrier Co.*, 277 NLRB 570 (1985), relied on by the Employer, is distinguishable as the employer in that case had only "rare" transfers or interchange, and there was substantial autonomy with respect to each project.

⁵There is no bargaining history.

⁶Because the petition seeks a unit encompassing an "area" that is described in terms of specific counties rather than, for example, described in terms of a metropolitan area, we shall evaluate the appropriateness of the unit as set forth in the petition. In this regard, we note that no party has contended that the petitioned-for unit should be evaluated in terms of any pertinent geographical metropolitan cluster, and thus the record contains no basis for us to consider that possibility.

mula,⁷ but concluded that the formula itself was somewhat over inclusive and, therefore, fell short of serving those purposes. Under *S. K. Whitty*, the Board now requires a history of recurrent employment except for instances when employment with an employer has been for 90 days or more in the 12-month period immediately preceding the eligibility date. Thus, eligibility rests on a showing that an employee has worked at least two periods of employment cumulatively amounting to 30 days or more in the 12-month period immediately preceding the eligibility date or has had some employment in the 12-month period and has had at least two periods of employment cumulatively amounting to 45 days or more in the 24-month period immediately preceding the eligibility date. In the absence of such recurrent employment, eligibility will be found on a showing that an employee has worked for one period of 90 days or more in the 12-month period immediately preceding the eligibility date.

In the instant case, the Regional Director found that 13 named employees met the eligibility criteria of *Daniel Construction* and that 1 additional employee, who had been employed on 2 jobsites, would be permitted to vote under challenge because the Employer's payroll records were incomplete. Of the 13 employees eligible under the *Daniel Construction* formula, the record shows that at least 10 were employed on more

than one jobsite during the eligibility period⁸ and, therefore, these employees meet the recurrency requirements of *S. K. Whitty*.⁹ Of the remaining employees, all three were employed for at least 90 days in the year preceding the eligibility date.¹⁰ Accordingly, as the record shows that the Employer employs "key" employees who have a substantial continuing interest in the Employer's employment conditions and who have a reasonable expectation of reemployment, we affirm, under *S. K. Whitty*, the Regional Director's voter eligibility findings.

ORDER

It is ordered that the Regional Director's Decision and Direction of Election is affirmed, as modified below, and the case is remanded to the Regional Director for Region 26 for action consistent with our findings herein.

The appropriate unit is:

All carpenters, apprentice carpenters and carpenter's helpers employed by the Employer in Davidson County in the State of Tennessee, excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined by the Act.

⁷The central purpose of the *Daniel* formula was to ensure that former employees of an employer who have a reasonable expectation of employment in the foreseeable future are permitted to vote even though they are not presently employed by the employer on a jobsite.

⁸The Employer maintains that employment at each jobsite is decided by a separate hiring determination by the job superintendent at that jobsite.

⁹These employees are Robert L. Humphus, Jimmy R. Judd, Robert E. Morgan, Ronnie L. Hayes, Robert C. Redden, Jimmy Aldridge, Joe Armstrong, Kris Harrelson, Larry J. Harrington, and Troy S. Pierce.

¹⁰These employees are Danny Cason, Leonard Taylor, and Bill Wooten. Employee Burgess testified that these employees also worked at a second jobsite, a matter disputed by the Employer.